

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4659 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

MARATHA PRAKASH GANPAT

Versus

DISTRICT MAGISTRATE

Appearance:

Ms. Bunna Datta for MR ANIL S DAVE for Petitioner
Mr. Nigam Shukla, learned Asst.G.P. for the respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 04/11/96

ORAL JUDGMENT :

1. This Special Civil Application is directed against the detention order dated 27-4-96 passed by the District Magistrate, Mehsana whereby the petitioner has been detained under the provisions of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act'). The detention order was executed on 30-4-96 and since then petitioner is under detention lodged at Jamnagar Jail.

2. The present Special Civil Application was filed in this Court on 4-7-96 and on 5-7-96 Rule returnable on 12-8-96 was issued. So far neither any reply has been filed on behalf of the respondents nor any affidavit of the detaining authority has been filed.

3. The grounds enclosed with the detention order show that 4 criminal cases under the Bombay Prohibition Act and for offences under IPC Chapter 16 and 17 were registered against the petitioner at Kalol City Police Station. Besides these, the detaining authority has also considered the statements made by 4 witnesses against the petitioner's anti social and bootlegging activities. The petitioner has been found to be a head strong person, a bootlegger and engaged in anti social activities and the business of unauthorised liquor and despite his release from the earlier detention on 4-7-94 he has not improved and has repeated the offences. Accordingly the detention order has been passed.

4. The detention order is challenged on more than one grounds but the learned counsel for the petitioner has kept her submissions confined to the question that the copies of the bail applications and bail orders of C.R. No.119/95 and C.R. No.495/95 had not been supplied to the petitioner. This factual position has not been controverted by the respondents and Mr. Shukla has stated on the basis of the record that the copies of the bail orders and the bail applications, as alleged by the petitioner in para 8 of the petition, had not been supplied.

5. Thus it is clear that the petitioner's right under Article 22(5) of the Constitution of India to make effective representation has been violated and the detention order deserves to be quashed and set aside on this ground alone.

6. Accordingly the Special Civil Application is allowed and the impugned detention order dated 27.4.96 passed by the District Magistrate, Mehsana is hereby quashed and set aside and the petitioner's detention is declared to be illegal. The respondents are directed to release the petitioner and set him at liberty forthwith, if not required in any other case. Rule is made absolute.